IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1841 OF 2001

Jatindar Singh Choudhary/
Chauhan .. Petitioner

Versus

Parsuram Sudham Pawar & Ors. .. Respondents

Mr.Abhay L Patki for petitioner

Mr.K.K.Tated for respondent No.1

CORAM : S.C.DHARMADHIKARI, J.

DATE : DECEMBER 16, 2004.

P.C.

. This petition challenges an order passed by the Cooperative Appellate Court appointing

Court Receiver in respect of a row house. This Court on 2nd April 2001 had directed issuance of notice, returnable on 16th April 2001. This Court had observed that the Court Receiver has been appointed without taking into account the possibility of waste or damage to the property in dispute. While issuing notice, this Court had directed parties to maintain status quo. The matter has been pending since then for admission.

2. Today, when this matter appeared before me for admission, Mr.Patki, learned Counsel for petitioner prayed for adjournment on the ground that clients have taken away the papers. It appears that no application has been made for withdrawal of appearance nor Mr.Patki has been discharged as an Advocate appearing for petitioner. Mr.Tated, learned Counsel appearing for respondent No.1 objects to this request on the ground that similar application was made before this Court on 26th March 2004.

3. The dispute in case No.CC/4/177/1999 is pending in the Cooperative Court. The Cooperative Appellate Court has by the impugned order allowed the application of respondent No.1 and directed Court Receiver to take only formal possession of the disputed property. The Court Receiver was also directed to appoint respondent No.2 as his agent.

4. Now that the order appointing Court Receiver has been stayed for more than three years, there is no warrant in considering the merits of matter and whether a prima facie case was made out for appointment of Court Receiver. From the record it appears that dispute is filed by respondent No.1 on the allegation that he had paid the entire consideration and ought to have been put in possession of the property in dispute. Grievance is that the very same property has been by a subsequent agreement

purported to be sold to the petitioner before me. Respondent No.1 has filed a dispute praying for declaration and injunction claiming to be a member of respondent No.2 society on the strength of a prior agreement. Admittedly, petitioner before me is in possession of the suit property. It is not clear as to whether petitioner has been paying the society charges. In my view, the order appointing Receiver having been stayed for all this time, no useful purpose will be served by appointing Court Receiver for taking formal possession of the property in dispute. Instead, following order would meet the ends of justice.

a) Cooperative Court concerned is directed to expedite hearing of the dispute and endeavour to dispose of the same and within a period of six months from today;

b) Pending hearing and final

disposal of the dispute the order of status quo passed by this Court shall continue.

c) Petitioner is directed to pay society charges and other outgoings in respect of property in dispute to respondent No.2 society.

d) Petitioner to place on affidavit before the trial court the bills raised by the society and the details of payment, if any, made by him from time to time. Such an affidavit to incorporate undertaking that he would continue to pay outgoings as well as society dues during pendency of the dispute. Petitioner shall also clear the arrears pertaining to the above dues, if any, within a period of eight weeks from today;

e) Upon failure to file the affidavit within a period of two weeks from today, as well as to make the payment of arrears within the stipulated time, liberty to respondent No.2 to apply for such interim reliefs as he may be advised including renewing the application for appointment of Court Receiver. In that event, neither the observations of the court below nor the order of status quo shall constitute a bar in raising appropriate pleas and for the court below to consider the same.

f) With these directions, the petition is disposed of.

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